

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

BIRNIE BUS SERVICE, INC.

Employer

and

Case 03-RC-248964

**CIVIL SERVICE EMPLOYEES ASSOCIATION
(CSEA) LOCAL 1000, AFSCME, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

A hearing was held in this matter before a hearing officer of the National Labor Relations Board on October 10, 2019. At this hearing, Civil Service Employees Association (CSEA) Local 1000, AFSCME, AFL-CIO (the Union) and Bernie Bus Service, Inc. (the Employer) executed stipulations resolving all but two outstanding issues. The issues that remain are: (1) the proper date on which to hold the election, and (2) whether the classification of payroll clerk should be included in the proposed bargaining unit.

As to the first issue, election arrangements, including the date of an election, are not litigable matters at a pre-election hearing, although the parties were solicited for their positions on the matter. As to the second, I have elected to allow employees in the classification of payroll clerk to vote subject to challenge, with a decision on the eligibility of these individuals to be resolved in a post-election proceeding, if necessary.

Based on the entire record, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of the Act.¹
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹ The parties stipulated that the Employer is a New York corporation with an office and place of business located at 2245 Dwyer Ave., Utica, New York, where it provides school bus transportation services. In the past 12 months, a representative period, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its Utica, New York facility, parts, equipment and/or supplies valued in excess of \$5,000 directly from points located outside the State of New York.

5. The following employees of the Employer constitute a voting unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time² monitors, mechanics, dispatchers, and 19A coordinators employed by the Employer at its 2245 Dwyer Ave., Utica, New York 13501 facility.³

Excluded: Operations managers, assistant operation managers, training coordinators, assistant training coordinators, safety officers, student management coordinators, charter coordinators, buildings and grounds supervisors, hiring coordinators, lead dispatchers, routers, lead mechanics, confidential employees, managers, guards, and supervisors and professional employees as defined in the Act, and all other employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Civil Service Employees Association (CSEA) Local 1000, AFSCME, AFL-CIO.

A. Election Details

The election will be held on Friday, November 1, , 2019 from 7:30 a.m. – 11:00 a.m. and 12:30 p.m. – 6:00 p.m. at the Training Room adjacent to the Driver's Lounge at the Employer's facility located at 2245 Dwyer Ave., Utica, New York.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Sunday, October 13, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

² In order to be considered "regular part-time," an employee must have worked an average of four hours per week over the thirteen weeks preceding the payroll period ending Sunday, October 13, 2019.

³ The parties disagree as to whether the position of payroll clerk should be included or excluded from the bargaining unit. The individuals holding the position of payroll clerk shall vote subject to challenge, with their eligibility to be resolved during a post-election proceeding, if necessary.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include in a separate section of that list the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, October 18, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the

unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least three full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 16, 2019

/s/ Paul J. Murphy

PAUL J. MURPHY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
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